IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9607 OF 2003

Vasudev Mahadev Gavkar : Petitioner

(Orig. Applicant)

V/s.

Giridhar Ramdas Gavkar & Ors. : Respondents

(Resp.no.1-Orig.Opponent)

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Mrs.Shakuntala A. Mudbidri for the petitioner.

Mr.R.A. Thorat for respondent no.1.

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CORAM : S.A. BOBDE, J.

June 6, 2005.

P.C.:

1. Rule, returnable forthwith. Mr.Thorat, learned counsel, waives service of rule on behalf of respondent no.1.

Heard by consent.

2. This petition is filed by a person claiming to be a tenant of the disputed land. The disputed land admeasures 81 ares. The tenant claims tenancy over 60 ares. He has been allowed the status of a tenant over 37 ares by the

Courts of Tahsildar and the Sub-Divisional Officer. Two Courts referred to above granted the tenancy on the basis that there was a partition between the co-owners. This finding was on the basis of aniwari shown in the 7/12 extracts, particularly of the year 1992-93 and allegedly admitted by some of the parties who were served.

3. The Maharashtra Revenue Tribunal has, in exercise of its revisional jurisdiction, reversed the finding on the basis that there is no partition amongst the co-owerns. The Revenue Tribunal has also found that there is no satisfactory evidence to prove the claim of tenancy, except an entry in the Crop Inspection Column in the year 1993. In the absence of a formal partition, the Maharashtra Revenue Tribunal held that the tenancy could not have been claimed from one of the co-owners. While the Tribunal's view, in law, may be justified, I find that there is no discussion whatsoever on the basic question, viz., the basis of admission by some of the co-owners about the tenancy of the petitioner. If there is an admission of tenancy based on a partition between the co-owners, then possibly the petitioner may have a claim to the area over which the tenancy is admitted.

4. In the circumstances, I consider it appropriate in the

interest of justice to allow the petition. The order dated 10.8.2001 is set aside. The matter is remanded to the Tahsildar, Rajapur, for an inquiry into the question whether the admission of tenancy is on the basis of a partition between the co-owners. The Tahsildar shall take an appropriate decision, in accordance with law, without being influenced by any observations of this Court. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.